

## Message Text

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ACTION L-03

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FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 3991

INFO AMCONSUL FRANKFURT

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DEPT FOR L/M - MALMBORG AND SHAMWELL

E.O. 11652: N/A

TAGS: AFSP, OGEN-LEGAL, GW

SUBJECT: FRG LABOR COURT ACTION AGAINST CONSULATE

GENERAL FRANKFURT BY FORMER FSL EMPLOYEE STANG

REF: FRANKFURT'S 7133

1. EMBASSY LEARNED FROM UK LEGAL ADVISER (EDWARDS) OF TWO FAIRLY RECENT ACTIONS AGAINST UK CONSULATE FRANKFURT IN LABOR COURT THERE. BOTH WERE EVENTUALLY SETTLED OUT OF COURT WITH NOMINAL PAYMENTS BY UK. FIRST CASE CONCERNED CLAIM OF WRONGFUL DISMISSAL. CONSULATE GENERAL ARGUMENT THAT IT WAS IMMUNE UNDER UK/FRG CONSULAR TREATY WAS UNSUCCESSFUL (POSSIBLY PRIMARILY BECAUSE SERVICE OF SUMMONS ON CONSULATE HAD BEEN ACCEPTED). HOWEVER, CONSULATE ALTERNATELY HAD CLAIMED THAT EMPLOYEE HAD BEEN SERVANT OF CROWN RATHER THAN CONSULATE (CONTRACT OF EMPLOYMENT SO SPECIFIED) AND WAS ENTITLED TO SOVEREIGN IMMUNITY. ALTHOUGH CASE WAS SETTLED BEFORE DECISION, EDWARDS AND GERMAN ATTORNEY WHO REPRESENTED CROWN STRONGLY BELIEVE THAT CLAIM TO SOVEREIGN IMMUNITY WOULD HAVE BEEN SUCCESSFUL.

2. IN SECOND CASE CONCERNING CLAIM OF UNSATISFACTORY REFERENCE AFTER EMPLOYEE LEFT CONSULAR EMPLOYMENT, IN LIMITED OFFICIAL USE

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WHICH HMG WAS NAMED AS DEFENDANT, SUMMONS WAS RETURNED

TO COURT BY CONSULAR COMMUNICATION (DRAFTED BY LOCAL COUNSEL) TO EFFECT THAT CONSULATE COULD NOT ACCEPT SUMMONS ON THE CROWN. ACTION CONTINUED IN LABOR COURT NONETHELESS, AND CONSULATE ASSERTED CLAIM OF SOVEREIGN IMMUNITY. HOWEVER, AT SAME TIME IT EXPRESSED WILLINGNESS TO WAIVE IMMUNITY FOR REASONS OF GOODWILL. MATTER WAS THEREAFTER AMICABLY SETTLED OUT OF COURT.

3. EDWARDS INDICATED THAT UK EXPERIENCE SHOWS THAT LABOR COURTS HAVE LITTLE PATIENCE FOR CONSULAR CLAIMS OF IMMUNITY. MOREOVER, FEDERAL GOVERNMENT LEAVES IT TO GOVERNMENTS TO ARGUE THEIR IMMUNITY AND DOES NOT AT ITS INITIATIVE SUGGEST IMMUNITY ON THEIR BEHALF. EDWARDS EXPRESSED FULL CONFIDENCE WITHOUT RESERVATIONS IN LOCAL ATTORNEY, DR. H. KARSTEN SCHMIDT (ALSO MEMBER OF ILLINOIS BAR AND PARTNER, BAKER & MCKENZIE) WHO HANDLED UK CASES. DEPARTMENT MAY, IN LIGHT OF UK EXPERIENCE, WISH TO AUTHORIZE CONSULATE GENERAL FRANKFURT TO ENGAGE SERVICES OF SCHMIDT TO DRAFT APPROPRIATE COMMUNICATION WHICH WOULD REJECT SERVICE OF SUMMONS AND SUGGEST INVOLVEMENT OF FEDERAL GOVERNMENT IN ANY SERVICE OF PROCESS AS ACTION IS IN FACT AGAINST USG.

4. EMBASSY HAS BEEN INFORMED BY CONSULATE GENERAL FRANKFURT THAT ON BASIS OF ORAL EXPLANATION TO LABOR COURT JUDGE THAT CONSULTATION WITH WASHINGTON AND INSTRUCTIONS WERE REQUIRED BEFORE CONSULATE COULD REACT TO SUMMONS, JUDGE HAS GRANTED 60-DAY EXTENSION FOR US REACTION TO SUMMONS. EMBASSY BELIEVES, HOWEVER, THAT EFFORTS TO REJECT SUMMONS SHOULD BE UNDERTAKEN ASAP.  
HILLENBRAND

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